IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 292 OF 1998

PEHAP SINGH & ORS.
V/S
STATE & ORS.

Mr. AMIT DAVE, for the appellant / petitioner

Mr. B.L.BHATI, G.A., for the respondent State.

Date of Order : 3.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

The petitioners/appellants by this appeal seek to challenge the order of the learned Single Judge dated 01.09.1997, whereby the petition was dismissed on the ground of availability of remedy under the Payments of Wages Act or the Minimum Wages Act or Section 32(2)C of the Industrial Disputes Act.

The case of the present appellants as transpires in the writ petition is that they were appointed as Teacher Grade III and later on continued on the said posts but after giving artificial breaks in the service, more so when, the post of Teacher Garde III was lying vacant. It was further stated that break in service was given during the summer vacation with the view to avoid payment of

wages. It was further contended, that such type of action was deprecated by the Court in the Case of Chanda Tamboli & Ors. (D.B.Civil Writ Petition No. 2795/1987) decided on 15.06.1988. In the said decision, judgement of the Hon'ble Apex Court in the Case of Ratan Lal & Ors. Was referred. Further contention of the appellants was that they had completed B.Ed. Training Course from Kota Open Univesity, pursuant to the order dated 25.10.1991, the contention of the petitioner was that, since they were discharging duties similar to regular selected teacher grade III, hence, they were entitled for salary in the regular pay scale but they were paid only a consolidated salary of Rs. 400 per month. Thus, it was prayed that the petitioner should be given arrears of salary from the date of initial appointment till 14.07.1988 along with interest @ 18%. It was further prayed that the petitioner should also be allowed payment of arrears of salary of summer vacation by awarding the regular pay scale of the post of Teacher Garde III.

The writ petition of the petitioner was dismissed finding it not to be maintainable, in view of remedies under different statutory provisions, as exists in the Payments of wages Act, Minimum Wages Act and Industrial Disputes Act, being available.

We have considered the submissions of the learned counsel for the appellants on merit. The perusal of the

record shows, that the petitioners were not in possesion of the required qualification of post of Teacher Grade III for the period, for which pay scale of the post is being demanded. Rather averment in the writ petition exists to the effect, that pursuant to the order dated 25.10.1991, petitioner were allowed to undertake B.Ed. Training Course from Kota Open University. Thus, even the pleadings of the writ petition sufficiently show, that appellants were not possessing the required qualification of the post, of which regular pay scale is being demanded from the date of initial appointment till 14.07.1988, along with interest. The writ petition further does not show, that which was the period of summer vacation, when petitioners were not employed for the purpose of denying wages, because vague averments cannot entitle appellants for grant of such benefits, which otherwise have not been specified. Therefore, in absence of the specific pleadings, the claim as has been made by the appellants, cannot be allowed. More so, now in view of the judgement of Hon'ble Apex Court, the demand of equal pay for equal work is not available to a person, who was not having even qualification of the post while working on it.

In our view, when the petitioners were not qualified at the time of initial appointment and acquired required qualification later, it can be said that by paying fixed amount per month, it in any manner, violated the principle

of equal pay for equal work, as interpreted by the Hon'ble Supreme Court in series of judgements starting from Uma Devi's case.

That being the position, the appellants are not entitled to the relief for equal pay for equal work and other reliefs, in view of the facts discussed above.

The net result is, that we do not find any force in this appeal, therefore, the same is dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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